



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,959	02/28/2005	Lucas Cyril Gerard Van Der Heyden	GRT/4662-2	3062
23117	7590	02/06/2007	EXAMINER	
NIXON & VANDERHYE, PC			AUDET, MAURY A	
901 NORTH GLEBE ROAD, 11TH FLOOR			ART UNIT	PAPER NUMBER
ARLINGTON, VA 22203			1654	
MAIL DATE		DELIVERY MODE		
02/06/2007		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Interview Summary</b>	Application No.	Applicant(s)
	10/525,959	HEYDEN
	Examiner Maury Audet	Art Unit 1654

All participants (applicant, applicant's representative, PTO personnel):

(1) Maury Audet, Examiner. (3) \_\_\_\_\_

(2) Gary Tanigawa, Applicant's Representative. (4) \_\_\_\_\_

Date of Interview: 2/2/07 and 2/5/07.

Type: a) Telephonic b) Video Conference  
c) Personal [copy given to: 1) applicant 2) applicant's representative]

Exhibit shown or demonstration conducted: d) Yes e) No.  
If Yes, brief description: \_\_\_\_\_.

Claim(s) discussed: All.

Identification of prior art discussed: US 5,292,538 (amino acid chelators, col.4-5, etc.); US 6,114,307 (insulin sensitizers and peptides, cl's 2 & 4, etc.); 6,689,385 (teaching taurine (amino acid) is also deemed an "insulin sensitizer").

Agreement with respect to the claims f) was reached. g) was not reached. h) N/A.

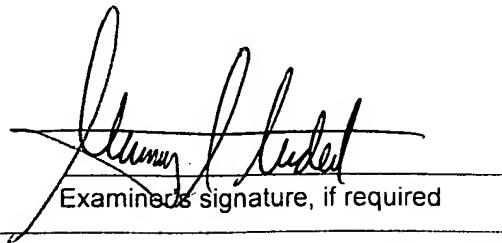
Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

MAURY AUDET  
PATENT EXAMINER

Examiner Note: You must sign this form unless it is an attachment to a signed Office action.



Examiner's signature, if required

## Summary of Record of Interview Requirements

### Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

### Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

#### 37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,  
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

### Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Applicant scheduled an interview following response to discuss the outstanding restriction requirement and bona fide non-response (Form 90) mailed thereafter. The issue surrounds the election of the "peptide fraction" as the product of the hydrolysate and in part the "insulin sensitizer". As to the latter, upon reconsideration, the Examiner is presently willing to accept Applicant's traversal that "insulin sensitizers" are a class of compounds. However it is also noted that virtually any kind of compound from metals (chromium) to amino acids (taurine) are deemed insulin sensitizers, which begs the question of if virtually every type of compound can function as an insulin sensitizer how meritorious is calling these otherwise structurally distinct compounds a class (e.g. Markush group) when virtually every type of compounds can carry out the function? Notwithstanding the election of a specific "insulin sensitizer" has been changed from an election of invention to a species invention.

As to the issue of the peptide fraction in terms of the product/composition, whether the peptide fraction arrives in the composition via hydrolysis is deemed mere functional language that leads to the claimed end product: insulin sensitizers and a peptide fraction in composition.

Regarding the methods and a step of hydrolysing a peptide to arrive at the end product; a hydrolysate is defined by the Online Medical Dictionary as "the product of a hydrolysis reaction. Hydrolysates are generally named according to what reactant was hydrolysed to come up with the product, for example protein hydrolysate if the reactant was a protein." "Hydrolysis being the splitting of a compound into fragments by the addition of water, the hydroxyl group being incorporated in one fragment and the hydrogen atom in the other".

The Examiner maintains that defining the hydrolysate simply as a "peptide fraction" does not reasonably identify the peptide in question to allow for a reasonable search of the invention. (And absent evidence to contrary that one of e.g. larger v. smaller or different amino acid peptide fractions contain some unexpected result in the context of the present invention, it would seem obvious that any peptide fraction would carry out the product/method, and be obvious over any size or type of peptide fraction). As claimed there is no coextensively searchable core structure to a "peptide fraction" allowing for a reasonable search of the invention structurally. However, upon discussion with Applicant, the Examiner is willing to textually search the invention, based on Applicants assertion that it is not the structure of the peptide fraction per se that matters, rather other features of the peptide fraction such as size (e.g. dipeptide, tripeptide, Dalton size) that is claimed and can be searched textually. Thus, like the "insulin sensitizer", the election of the "peptide fraction" has been changed to that of a species election as opposed to an election of the invention.

The Examiner maintains that under a reasonable interpretation of the claim language, the a person taking a drink of milk reads upon the present claims, as indicated in the restriction requirement.

Applicant indicated a revised restriction response and amendment would be forthcoming.